



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT



ARNOLD
SCHWARZENEGGER
GOVERNOR

For Meeting Date: February 14, 2008

Agenda Item No. 2: Approval of a Negative Declaration and Reclamation Plan for the Proposed San Francisco Marina West Dredge Program (CA Mine ID #91-38-00XX), City and County of San Francisco Planning Department (Operator/Agent), Bay Conservation and Development Commission (BCDC).

INTRODUCTION: Under the Surface Mining and Reclamation Act of 1975 (SMARA, Public Resources Code Section (PRC) 2710 et seq.), a surface mining operation must have a reclamation plan and financial assurance approved by its respective lead agency (city, county, San Francisco Bay Conservation and Development Commission, or the State Mining and Geology Board (SMGB)) prior to engaging in surface mining activities (PRC Section 2770). The SMGB is the SMARA lead agency for marine dredging operations in the San Francisco Bay-Delta area, and is responsible for the review and approval of reclamation plans, financial assurances, and environmental review documents. The Negative Declaration and proposed Reclamation Plan that is being considered for approval by the SMGB, is for the San Francisco Marina West Dredge Program, Block 900, Lot 003, which is operated by the City and County of San Francisco Planning Department.

BACKGROUND:

Project Description: The City and County of San Francisco is proposing the San Francisco Marina Dredge Program (Marina) for Assessor's Block 900, Lot 003, located along the northern waterfront of San Francisco, adjacent to the Marina Green, between Crissy Field on the west and Fort Mason on the east. The Marina is in a P (Public) use district, and OS (Open Space) height and bulk district.

California Environmental Quality Act (CEQA): Title 14 of the California Code of Regulations, Section 15096(e)-(i) states "A Responsible Agency complies with CEQA by considering the EIR or Negative Declaration prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved." The City and County of San Francisco Planning Department is the CEQA lead agency and has the principal responsibility for the environmental review of the proposed project pursuant to CEQA Guidelines Section 15367, and preparing and adopting the Negative Declaration. The SMGB is the CEQA Responsible Agency and the SMARA lead agency. The City and County of San Francisco Planning Department is the lead agency Under CEQA Guidelines Section 15381. The SMGB is the responsible agency, that is, a public agency that proposes to carry out or approve a project, for which a lead agency is preparing or has prepared an EIR or Negative Declaration, and has discretionary approval power over the project. As a



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responsible agency under CEQA, the SMGB can make its own findings and determinations pertaining to the approval of the reclamation plan, and can rely on the Negative Declaration in support of its decision to approve the City and County of San Francisco Planning Department Reclamation Plan.

A Negative Declaration has been prepared for this site subject to this review by the SMGB acting as the SMARA lead agency. A Final Negative Declaration (FND), Case Number 1998.834E, for maintenance dredging at the Marina was adopted and issued on May 18, 1999. An Addendum to the Negative Declaration was published on April 25, 2007. Since the addendum is considered a technical change that does not require public review per the CEQA Guidelines 15164, the addendum to the Negative Declaration did not require filing with the State Clearinghouse or sending out for review.

Reclamation Plan: The City and County of San Francisco's proposed reclamation plan, dated January 2008, used the SMGB's form for relatively small-scale operators, with attachments. The proposed dredging operation involves a 10-year permit period, and reflects a reduction in the dredging surface area, volume and depth, relative to an earlier proposal. The dredging area, referred to as Area D, will be located offshore from the outer tip of an existing jetty, incorporating about 156,964 square feet. Dredging depth will extend to -55 feet Mean Low Level Water (MLLW). Additional sand removal in Areas EC1 and EC2 will provide opportunities for re-use rather than in-water disposal that could occur with other materials dredged from this portion of the marina. Dredged sand will be transported upland to a permitted location and re-used on City's projects such as beach and playground replenishment, with silty material to be used for disposal at the Corps of Engineers' Alcatraz dredge disposal site.

Financial Assurance Cost Estimate: Pursuant to California Code of Regulations (CCR), Title 14, Section 3804(a), a *Financial Assurance Amount is calculated as prescribed in Public Resources Code Section 2773.1 and based on:*

- (1) *an analysis of the physical activities and materials necessary to implement the approved reclamation plan;*
- (2) *the lead agency's unit costs, or costs for third party contracting, for each of these activities, if applicable;*
- (3) *the number of units of each of these activities, if applicable;*
- (4) *a contingency amount not to exceed 10% of the reclamation costs.*



Prior to approval, reclamation plans for dredging operations should address the mitigative actions in the event that a dredge sinks during conduct of operations. The actual raising of a sunken vessel, in this case a dredge, does not meet the requirements of a financial assurance amount calculation pursuant to CCR Title 14, Section 3804(a), and thus, such requirements cannot be used as the basis of determining financial assurances for these types of mining operations. However, Marine Liability insurance, typically held by the marine sand mining operators, does provide coverage for costs and expenses of, or incidental to, the removal of a wrecked vessel should this scenario occur. Marine Liability insurance is commonly referred to as “Protection and Indemnity”, or more specifically noted, as the Protection and Indemnity form “SP-23”. Under Clause (7) “*Removal of Wreck*” provides insurance coverage for costs and expenses of, or incidental to, the removal of the wreck of the vessel, which is named within the policy, when such removal is compulsory by law or otherwise presents a hazard to navigation. Thus, reclamation plans for dredging operations need to maintain insurance coverage which reflect “*In the unlikely event that a dredge were to sink, the sand mining operator would be responsible to recover the vessel in accordance with applicable legal requirements; such requirements are covered under the sand mining companies’ liability insurance policies. This insurance covers the cost or expenses of, or incidental to, the removal of a wrecked vessel named in the policy whenever removal is required by state or federal law.*”

The Executive Officer is satisfied that the “Protection and Indemnity” insurance policy, with inclusion of both the SMGB and the Department of Conservation as “additional insured” on such policy, for this marine oyster shell mining operations, would suffice to reclaim the mine site (i.e., salvage a dredge in the unlikely event such dredge was to sink), and be in accordance with the requirements of SMARA. Considering the uniqueness of this type of mining operation, the insurance policy serves as an “operationally equivalent” financial assurance instrument. The Executive Officer recommends that the SMGB approve a financial assurance amount of zero dollars, since both the SMGB and the Department of Conservation have been added as “additional insured” on the “Protection and Indemnity” insurance policy, for this mine dredging operation.

SMGB ACTION: The SMGB may take the following actions:

1. Approve, as adequate, the Negative Declaration, reclamation plan and/or Protection and Indemnity insurance policy, without additions;

[or]

2. Modify the Negative Declaration, reclamation plan and/or Protection and Indemnity insurance policy, with Additions, and then accept the documents as adequate;



[or]

3. Reject the Negative Declaration, reclamation plan and/or Protection and Indemnity insurance policy, as inadequate, and order them to be redone.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer has reviewed the environmental documents and recommends the SMGB accept the Negative Declaration, reclamation plan and Protection and Indemnity insurance policy, as adequate and prepared in accordance with the CEQA and SMARA.

SUGGESTED SMGB MOTION:

To approve the Negative Declaration:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve the Negative Declaration as proposed in this report for the reclamation plan known as the San Francisco Marina West Dredge Program, Block 900, Lot 003, as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975 and the California Environmental Quality Act.

To approve the reclamation plan:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve the reclamation plan, for the operations known as the San Francisco Marina West Dredge Program, Block 900, Lot 003, as complete and prepared in accordance with the requirements of the Surface Mining and Reclamation Act of 1975 and the California Environmental Quality Act.



To approve the financial assurance cost estimate:

Mr. Chairman, in light of the information before the SMGB today, I move that the Board approve a financial assurance in the amount of zero dollars, and a "Protection and Indemnity" insurance policy, with inclusion of both the Board and the Department of Conservation as "additional insured" on such policy, for the operations known as the San Francisco Marina West Dredge Program, Block 900, Lot 003.

Respectfully submitted:

Stephen M. Testa
Executive Officer

